

30 June 2022

Mr Michael Cassel
Secretary
Department of Planning and Environment
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

Dear Mr Cassel

GLENDALL CONTINUED OPERATIONS PROJECT (SSD 9349)

I refer to the letter to the Independent Planning Commission (**Commission**) sent by Mr Clay Preshaw on your behalf on 19 May 2022.

In that letter, Mr Preshaw advised that you determined to grant the Commission's request for additional time to determine the State significant development application for the Glendell Continued Operations Project (**Glendell Application**). The extension granted by you had the effect of extending the determination date for the Glendell Application to 8 July 2022. The reason for the Commission's request was to accommodate consideration of further assessment by the Department of Planning and Environment (**DPE**) of matters relating the heritage impacts of the Glendell Application.

Since that time, on 21 June 2022, the Commonwealth Department of Agriculture, Water and Environment (**DAWE**) informed the Commission that – contrary to DAWE's firmly expressed position of 16 March 2022 – it would provide to the Commission a report prepared under section 10(4) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (**ATSIHPA Report**) on a confidential basis.

The history of DAWE's position on the ATSIHPA Report, as it relates to the Commission, can be summarised as follows:

- *7 March 2022 – 9 March 2022*: the ATSIHPA Report can be considered by the Commission, but not published.
- *9 March 2022 – 21 June 2022*: the ATSHIPPA Report cannot be considered or published by the Commission.
- *21 June 2022 – present*: the ATSIHPA Report can be considered by the Commission, but not published.

The Commission has received representations that the 360 page ATSIHPA Report contains material particularly relevant to consideration of the Glendell Application's impacts on Aboriginal cultural heritage, which was identified by DPE's assessment of the Glendell Application as a key issue.

The Commission's consistent and unchanged view – as expressed to DAWE as early as 7 March 2022 – is that information before its decision-makers should also be available to the

public to scrutinise. This is, in the Commission's view, a critical part of building and maintaining public trust in the NSW planning system.

DAWE maintains that the ATSIHPA Report cannot be published by the Commission, which constrains the Commission's ability to act transparently in accordance with its objectives.

Accordingly, the Commission is now urgently seeking legal advice to examine the options available to it to determine the Glendell Application in a timely, lawful and procedurally fair manner.

As a consequence of the disruption to the Commission's determination of the Glendell Application occasioned by DAWE's repeated change of position, the Commission is not in a position to determine the Glendell Application by 8 July 2022.

The Commission seeks your agreement, under the terms of reference for the Minister's request to the Commission dated 9 September 2021, to an extension of time to **22 July 2022** in order to enable the Commission to take legal advice and consider its options.

On or before 22 July 2022, the Commission will inform DPE of the steps it proposes to ensure that the Glendell Application is determined in a timely, lawful and procedurally fair manner and will write to you again to seek a further extension of time to enable it to implement those steps.

Should you wish to discuss this matter further, please contact me on [REDACTED] or stephen.barry@ipcn.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Barry', with a long horizontal line extending to the right and a small loop at the end.

Stephen Barry
A/Executive Director